



February 4, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability; WC Docket No. 01-338*

Dear Ms. Dortch:

On February 3, 2003, the undersigned, on behalf of the Association of Local Telecommunications Services (ALTS), along with Julia Strow of Cbeyond, John Heitmann and Steve Augustino of Kelly Drye, and Patrick Donovan of Swidler Berlin, made an oral *ex parte* presentation to Bill Maher, Jeff Carlisle, Rich Lerner, Michelle Carey, Brent Olson, Tom Navin, Jeremy Miller, and Julie Veach of the Wireline Competition Bureau and Chris Killion of the Office of the General Counsel, in the above-reference dockets. The parties primarily discussed the concept of applying eligibility criteria and service restrictions to competitive carrier access to enhanced extended links. The substance of that discussion shall be set forth in a separate written *ex parte*. This letter is designed to address CLEC access to unbundled loops to deliver advanced services. ALTS briefly touched on the issue during the course of the meeting, but did not have sufficient opportunity to address the issue within the time constraints of the *ex parte* meeting.

Competitors have consistently advocated that the Commission ensure non-discriminatory access to unbundled loop plant, regardless of the composition of the loop. In particular, competitors have strongly advocated the availability of the full functions, features and capabilities of loops incorporating transmission electronics, such as hybrid fiber-copper loops including remote terminal electronics. Notwithstanding the incumbent LECs' legacy advantages over the rights of way, poles, ducts and conduits, captive rate base and monopoly economies of scope and scale used to construct these loops, the Commission appears to be considering placing a "cap" on the level of bandwidth that competitors will be able to receive over such facilities for the provision of broadband telecommunications services to residential end users.

First, ALTS adamantly objects to the use of any such caps in serving business customers. Competition would effectively be killed in business markets if CLECs were relegated to static technologies and capacity limitations that would effectively preclude customers from obtaining state-of-the-art robust service offerings from the competitive carriers.

ALTS also continues to have grave concerns over the imposition of such a cap in residential markets. In truth, any cap devised by the Commission would necessarily be based on the static technologies of today. Indeed, even today's network facilities readily allow for alternative equipment enhancing their capabilities – for example, the most common digital loop

carrier systems being deployed today allow for the installation of a variety of line cards, all capable of different speeds and features. While incumbents most commonly choose to offer only ADSL services up to 1.5 MBps over their remote terminal installations, those facilities remain technically capable of several other flavors and speeds of DSL. It would make no sense for the Commission to hobble competitors by limiting them to the technologies of today, while freeing the incumbents to monopolize the markets for superior services using newer technologies.

Accordingly, ALTS urges the Commission to proceed with the utmost of caution, should the Commission feel compelled to respond to incumbent LEC requests to develop a bandwidth cap for residential services. Specifically, ALTS urges the Commission to make clear that the incumbents must comply with the provisions of section 252(a), and negotiate in good faith over competitor access to loops including newer transmission technologies. The Commission should also make clear that, notwithstanding any bandwidth cap for residential services, incumbents remain under a statutory duty to provide competitors with non-discriminatory access to unbundled loops. As the marketplace for loop transmission technologies develops and enhanced transmission technologies become most efficient and widely available, this duty would include the provision of loop transmission beyond the bandwidth cap specified by the Commission. To this end, ALTS strongly urges that the Commission make clear that, notwithstanding any finding in the *Triennial Review Order* that competitors are impaired without access to loop transmission technologies for residential end users up to a specified level of bandwidth, as the efficiency and cost of widely available loop transmission technologies evolve, the level and type of bandwidth without access to which competitors are impaired over such facilities may correspondingly change. ALTS also urges the Commission to make clear that, upon a particular showing of evidence that the marketplace for loop transmission technologies has evolved in such a manner, state commissions may find that competitors are impaired without access to the evolving capabilities of loops incorporating such transmission technologies.

Respectfully submitted,

/s/

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